No. 83-692

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

LOCAL UNION NO. 47, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,
Petitioner,

vs.

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; SOUTHERN CALIFORNIA EDISON COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California

BRIEF FOR RESPONDENT PUBLIC UTILITIES COMMISSION IN OPPOSITION

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QUESTION PRESENTED

Whether the California Public Utilities Commission (Commission), pursuant to its responsibility to ensure that rates charged by public utilities are just and reasonable, may estimate labor expenses, as a component of operating expenses, for purposes of determining the increase in electric rates to be charged by a public utility.

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OPINION BELOW

The opinion below is correctly set forth in the Petition.

JURISDICTION

Jurisdiction is alleged under provisions of Title 28, Section 1257(3). As hereinafter shown, the respondent Public Utilities Commission challenges compliance with Rule 21.1(h) of this Court's rules concerning the jurisdiction of this Court, on the ground that the petition is inadequate to show where and in what manner a federal question was properly raised in the State Supreme Court.

STATUTES AND REGULATIONS INVOLVED

The statutes involved are correctly set forth in the Petition.

STATEMENT

This litigation derives from Commission Decision 82-12-055 issued on December 13, 1982 wherein the Commission authorized Southern California Edison Company (Edison) to increase electric rates by $580,935,000 for test year 1983. In reaching this figure the Commission estimated projected operating expenses for the utility and within that determination established a projected 6.1% labor escalation rate for the test period, to be applied to both unionized and nonunionized employees at Edison.

The dispute arises over the Commission's estimation and projection of labor expenses for ratemaking purposes in its evaluation of Edison's application for authority to increase the electric rates it charges. The Union does not question the reasonableness of the escalation rate adopted, nor does it object to the particular forecasting method used to reach this rate, but contends that the Commission lacks all authority to make *any* projection of wage and benefit expenses for ratemaking purposes with respect to unionized employees.

The International Brotherhood of Electrical Workers, Local Union No. 47 (Union), which filed an appearance as a party in the Commission proceedings but did not participate in the hearings, oral argument, or briefing, petitioned the Commission for rehearing of Decision 82-12-055. After full review of the allegations raised by the Union, the Commission denied this petition in Decision 83-03-061 issued March 16, 1983. The Union subsequently filed a petition for writ of review in the California Supreme Court. That Court denied the petition without opinion on July 27, 1983.

SUMMARY OF ARGUMENT

In the decision below, the California Supreme Court upheld the power of the Commission to estimate labor expenses, as a component of operating expenses, for purposes of determining the rates to be charged by a public utility. No reason exists for granting certiorari to review this decision.

Contrary to Petitioner's contentions, the decision by the State Supreme Court does not conflict with any decision of this Court or of the Courts of Appeal. None of the decisions cited preclude a state agency from exercising its ratemaking power in this manner. The United States Supreme Court cases cited, involving state action in the area of labor relations, pose the critically distinguishable questions whether a state may directly enter into the substantive aspects of the collective bargaining process by preventing an employer and union from carrying out the term of a collective bargaining agreement, or by curtailing the economic self-help activities of the union and its members.

Petitioner's claim of a conflict between the decision below and decisions of the Courts of Appeal is similarly unfounded. In contrast to the case at bar, all of the cases purportedly in conflict involved state attempts to intervene in labor disputes and coerce the parties into agreement. The authority most applicable to the instant case, *Amalgamated Transit Union Division 819 v. Byrne* 568 F.2d 1025 (3rd Cir. 1977), in which the Court upheld the state's attempt to influence collective bargaining negotiations in order to hold down transportation costs, rejected this line of cases and supports the lawfulness of the decision below.

Petitioner's claims also fail to present a substantial federal question justifying review by this Court. In asserting the significance of the problems allegedly raised, Petitioner erroneously assumes that the Commission has attempted to prescribe the terms of a labor contract rather than merely forecasted reasonable operating expenses in its determination of rates. The impending break-up of AT&T, referred to by the Union, is of absolutely no consequence to the instant dispute.

Finally, the judgment below is without error. In estimating labor expenses as a component of operating expenses in the determination of rates, the Commission has acted consistent with its powers derived from Articles 5 and 6 of the California Constitution and Sections 451, 454 and 701 of the Public Utilities Code to ensure that rates charged by a public utility are just and reasonable. While it is clear that the doctrine of federal preemption has been applied in the area of labor relations, that doctrine is inapplicable to the ratemaking action taken by the Commission. No authority has been cited which supports the proposition that the Commission's ratemaking jurisdiction is preempted by the National Labor Relations Act.

REASONS FOR DENYING THE WRIT

I

NO REASON EXISTS FOR THE GRANT OF CERTIORARI.

A. The Decision of the California Supreme Court Does Not Present a Conflict With Any Decision of This Court or of the Courts of Appeal.

None of the United States Supreme Court decisions cited by the Union preclude a state agency regulating public utilities from estimating test year labor costs and expenses in establishing rates. The claimed conflict (Petition pp. 4-8) with *Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976), *Local 24, Teamsters v. Oliver,* 358 U.S. 283 (1959), and *NLRB v. Insurance Agents' International Union,* 361 U.S. 477 (1960) simply does not exist.

All of these cases are critically distinguishable on their facts and the relevant points of law presented. In *Oliver,* supra, it was held that an Ohio antitrust statute could not be applied to prevent an employer motor carrier and union from carrying out their contract with respect to a mandatory subject of collective bargaining. The state action challenged was the filing of a lawsuit seeking to enjoin the Union and certain carriers from giving effect to a specific contract term. *Oliver* thus posed the question whether direct state action could be applied so as to prohibit the parties from carrying out the terms of an agreement resulting from the exercise of collective bargaining rights. In sharp contrast, there is no language in the Commission's decision which would prohibit the parties from collective bargaining nor from carrying out the terms of any agree-

ment reached thereby. In the case at bar the Commission has not ordered the utility to negotiate a specified wage, but in order to determine rates, has merely estimated wage escalation rates in forecasting probable future operating expenses. Consequently, the Court's ruling in *Oliver* presents no conflict.

Similarly, *Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission*, supra, not relied on by the Union in its Petition for Writ of Review to the California Supreme Court, is not on point. In dispute in *Machinists* was the authority of the Wisconsin Employment Relations Commission to grant an employer covered by the National Labor Relations Act (NLRA) an order enjoining a union and its members from continuing to refuse to work overtime, pursuant to a union policy to put economic pressure on the employer in collective bargaining negotiations. The critical inquiry raised as to whether the state could directly enter into the substantive aspects of the collective bargaining process by curtailing the self-help capability of the Union and its members, is again clearly distinguishable from the Commission's estimation of labor expenses in its determination of rates.

The conclusion in *Machinists* that the Wisconsin law at issue was impermissible in no way conflicts with the upholding of the Commission's rate order by the California Supreme Court. *Machinists* does not foreclose state action which may have an incidental effect on collective bargaining negotiations but which is not specifically directed toward altering the bargaining positions of employers or unions (See Concurring Opinion at 156). As this Court recognized in *New York Telephone Co. v. New York State*

Department of Labor 440 U.S. 519, 546 (1979), in the aftermath of *Machinists,* the fact that a general state policy "affects the relative strengths of the antagonists in a bargaining dispute is not a sufficient reason for concluding that Congress intended to pre-empt that exercise of state power."

Finally, the Union's reliance on *NLRB v. Insurance Agents' International Union,* supra, in support of a conflict is entirely misplaced. *Insurance Agents'* involved a charge of a refusal by the union to bargain in good faith. The Court held that certain harassing activities by members of the union, specifically designed to interfere with the conduct of the employer's business and for the explicit purpose of putting economic pressure on the employer to accede to the union's bargaining demands, would not support a finding by the National Labor Relations Board (NLRB) that the union had failed to bargain in good faith. Neither the caution against unwarranted intrusion by the NLRB, in the Court's dicta, nor the holding of the case, have any bearing on the issue of the Commission's estimation of test year operating expenses in furtherance of its ratemaking function.

The claim of a conflict between the decision below and decisions of the Courts of Appeal cited by Petitioner is equally erroneous. The Union unsuccessfully attempts to liken the Commission's decision to three cases which involved special state commissions created in order to investigate labor disputes. The authority presented establishes that a state investigation for the purpose of making findings and recommendations in order to bring pressure to force a settlement or to identify which of the parties was

responsible for an impasse in collective bargaining negotiations was unlawful coercive action, *Oil, Chemical & Atomic Workers v. Arkansas Louisiana Gas Co.* 332 F.2d 64 (10th Cir. 1964); *General Electric Co. v. Callahan*, 294 F.2d 60 (5th Cir. 1961); *Grand Rapids City Coach Lines v. Howlett* 137 F.Supp. 667, 672 (W.D. Mich. 1955). In the fourth case cited by Petitioner, *Delaware Coach v. Public Service Commission* 265 F.Supp. 648 (D. Del. 1967), the proscribed action was again purposefully coercive in nature.

There can be no doubt that the directly intrusive state action in those cases, the object of which was specifically coercive, is critically distinguishable from the Commission's exercise of its ratemaking function in the case at bar. Unlike the authority presented, the instant case does not concern a situation where the state is attempting to intervene in a labor dispute and coerce the parties into agreement. Thus, the obvious discrepancy in those cases between the state policy to force a settlement and that of the national policy not to compel agreement is entirely lacking herein. Furthermore, in contrast to the cited cases, the ratemaking action at issue was not directed toward inhibiting the exercise of NLRA Section 7 rights.

All of the cases purportedly in conflict with the decision below are distinguishable in another crucial respect. Not only was the state action in those cases directly and purposefully coercive, in contrast to the Commission ratemaking action, but the preemption in that line of cases, unlike the instant case, related to a conflict between state and federal functions *over labor disputes*. The asserted conflict in the instant case, however, is between the regulatory power of the Commission and the provisions of the NLRA. The

agencies involved have clearly differing functions. The state agency has a set of functions specifically geared toward assuring the general public reasonable and nondiscriminatory utility rates and adequate utility service. The federal agency, the NLRB, empowered by the NLRA, has a wholly separate and distinct set of functions pertaining to labor matters (i.e., the peaceful resolution of labor disputes). The distinction is apparent.

The significance of this distinction was recognized by the Court in *Amalgamated Transit Union Div. 819 v. Byrne* 568 F.2d 1025, 1030 (3rd Cir. 1977) where the cases now relied on by Petitioner were specifically distinguished. As stated therein:

> "New Jersey has asserted an interest in having transportation services provided to the public rather than a *broad interest in labor relations per se,* as was the case in *General Electric Co. v. Callahan* 294 F.2d 60 (5th Cir. 1961), petition for cert. dismissed, 369 U.S. 832, 82 S.Ct. 851, 7 L.Ed2d 840 (1962). See also *Oil, Chemical & Atomic Workers v. Arkansas Louisiana Gas Co.,* 332 F.2d 64 (10th Cir. 1964)." (emphasis supplied)

The reasoning of the *Byrne* Court is directly applicable to the controversy now before this Court. The California Commission has asserted its interest in assuring just and reasonable rates, "rather than a broad interest in labor relations per se". The preemption cases now cited by the Union, rejected in *Byrne,* should similarly be rejected in the case at bar.

Byrne also represents the authority in the field of labor relations involving state action most analogous to the factual situation in the instant case and clearly demonstrates

the lawfulness of the decision below. In *Byrne* the Third Circuit Court of Appeals held that New Jersey did *not* violate the NLRA by threatening to withhold certain state transportation subsidies from companies which agreed to include unlimited cost of living increases in their collective bargaining agreements. The court likened the role of the state to that of a private consumer interested in holding down the cost of an essential service and concluded that the state's attempt to influence the negotiations was permissible. As stated therein:

> "New Jersey, like the private consumer is attempting to exert pressure on the parties to the collective bargaining negotiations in order to hold down the costs of purchasing the 'essential' transportation services the companies provide." (at 1029.)

The action of the Commission, like that of the state officials in New Jersey, is motivated by the state's concern for the public interest in the area of essential services and is directed to holding down the costs of these services.

It should be noted that the instant case presents even stronger arguments than *Byrne* for sustaining the state action. The Commission's estimation of labor costs in its determination of rates does not nearly approximate the directly intrusive state action in *Byrne*. The Court specifically noted therein that New Jersey was attempting to exert pressure on the parties but held, nevertheless, that these pressures were not of a type proscribed by federal law. Moreover, while the actions of the New Jersey officials were prompted by their general concern for the public welfare, the Commission's action was compelled by its mandatory statutory responsibility to ensure that rates charged by public utilities are just and reasonable.

Accordingly, the upholding of the Commission's order by the State Supreme Court is entirely consistent with the decisions of the Courts of Appeal, as well as of this Court.

B. The Denial of the Union's Petition for Writ of Review By the Supreme Court of California Fails to Raise a Substantial Federal Question.

1. The Petition is Procedurally Inadequate to Raise a Federal Question Because It Lacks Specificity.

The petition seeks review of a judgment of the California Supreme Court. Rule 21.1(h) of this Court's rules provides in pertinent part:

> "(h) If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate court, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by the court; such pertinent quotation of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on writ of certiorari."

The Union's petition is entirely inadequate to show when and how it raised the federal question before the California Supreme Court. The instant petition fails to even specifically assert that a federal question is involved. The Union merely asserts that it applied to the California Supreme Court for a writ of certiorari, alleging for the reasons set

out in the instant petition that the Commission's decision was illegal and beyond its jurisdiction. Such a statement fails to provide the specific information, references, and quotations required by Rule 21.1(h).

2. The Claims of Petitioner Do Not Present An Important Federal Question Justifying Extraordinary Review by the Court.

Contrary to the assertion by the Union that the decision below raises significant federal questions, the judicable issues presented fail to warrant the review of this Court.

As discussed more fully in Argument II, the primary issue sought to be adjudicated has been rendered moot by subsequent developments. At the time the instant controversy was presented to the Supreme Court of California, collective bargaining negotiations had failed to produce a wage agreement between the Union and respondent Edison. However, prior to the filing of the instant Petition, such an agreement between the parties was reached. If it is not concluded that the changed circumstances render the instant controversy moot, as urged in Argument II, any atrophied controversy that may remain does not present the threat of "grave state-federal conflict" that warrants the attention of this Court to resolve (See *Taggart v. Weinacker's Inc.* 397 U.S. 223, 225 (1970).

Moreover, while Petitioner asserts that the decision below raises significant and recurring problems concerning the involvement of state and local regulatory agencies in the collective bargaining process (pp. 10, 11), the problems characterized by Petitioner as "yet unanswered" questions are not raised in this proceeding and are not ripe for

judicial review. The facts of record, therefore, permit neither the formulation nor the resolution of these questions.

The Union asserts first that the decision below raises the question whether states may regulate the substantive terms of collective bargaining agreements covering the utility companies' employees. If so, the Union asserts, the proper role of the employer and the union in this process remains to be answered. In framing these questions, the Union acts under the supposition that the Commission in the instant case has dictated the substantive terms of a collective bargaining agreement. This is entirely incorrect. The Commission has neither attempted to set wages or benefits, nor tried to prescribe the terms of labor contracts, but has merely forecasted what is reasonable in terms of ratemaking, in the exercise of its constitutional and statutory powers. It is the regulatory power to determine rates, not the assumption of authority to dictate wages, which has been exercised in the present case.

The Union also urges that the decision below raises the question whether a state may regulate local interests in such a manner that it conflicts with a federal statutory scheme. However, as established in Section (A) above, and Argument III, the Union has cited no appellate court decision which holds that provisions of federal labor law conflict with the California constitutional and statutory provisions which confer ratemaking jurisdiction on the Commission. Accordingly, there is no existing conflict for the Court to consider. The facts of record will, therefore, not support a determination of any of these questions.

All other questions raised in the Petition are posed too abstractly to justify review by the Court. Although the Union asserts that the Commission action unlawfully influences the collective bargaining process, the Union never specifies with particularity, nor is there any evidence of record to demonstrate, an actual interference with the collective bargaining process.

Finally, the Union's attempt to attach particular significance to this case on the ground that there is a trend for closer scrutiny of utility rates, which the Union speculates will intensify with the impending breakup of AT&T, is unfounded. The California Public Utilities Commission, formerly the California Railroad Commission, was created by amendment to the State Constitution on October 10, 1911. The Commission has been "scrutinizing" utility rates since 1912, when implementing legislation became effective. To suggest that *close* scrutiny of utility rates is a new trend is to ignore the entire body of regulatory decisions issued by the Commission. The impending breakup of AT&T simply has no bearing on the issues presented herein.

The claims of Petitioner, thus, fail to justify review by this Court.

II

THE ISSUE SOUGHT TO BE ADJUDICATED HAS BEEN RENDERED MOOT BY SUBSEQUENT DEVELOPMENTS.

The question which Petitioner seeks to raise necessarily relates to the collective bargaining negotiations between the Union and Edison for purposes of reaching an agreement as to the level of wages to be paid to Union employees at Edison. The crux of Petitioner's argument throughout

these proceedings is that the Commission's order impermissibly inhibits these negotiations.[1] However, the successful conclusion of these negotiations with the execution of a collective bargaining agreement for wages between the Petitioner Union and Respondent Southern California Edison Company on May 10, 1983, to be effective as of January 1, 1983, extinguished Petitioner's claims against the Commission.

The doctrine of mootness, derived from Article III of the Federal Constitution, under which the exercise of judicial power depends upon the existence of a case or controversy (*DeFunis v. Odegaard* 416 U.S. 312, 316 (1974)), requires that an actual controversy be extant at all stages of review, not merely at the time the action is filed (*Steffel v. Thompson* 415 U.S. 452, 459 n. 10 (1974)).

As a general proposition, this Court has ruled that a case becomes moot where, by an act of the parties, an existing controversy has come to an end, (*U.S. v. Alaska S.S. Co.* 253 U.S. 113 (1920)) or where the issues are no longer live and the parties lack a legally cognizable interest in the outcome, *County of Los Angeles v. Davis* 440 U.S. 625 (1979).

The agreement of Edison and the Union has extinguished the judicable controversy and the Union now lacks "a legally cognizable interest in the outcome." For this reason, Respondent suggests that the issue sought to be raised herein is moot and that the Petition should be summarily denied on that ground.

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[1]As pointed out in Argument I, the Union has failed to make any evidentiary showing in support of its allegation of interference. The record is devoid of any specific reference on this subject.

III

THE JUDGMENT BELOW IS CLEARLY CORRECT.

The California Supreme Court's denial of the Petition for Writ of Review of Commission Decision 82-12-055 was clearly without error. It is well-settled that a decision of a state commission setting rates and adopting a rate of return for a public utility, which decision has been upheld by the highest court of the state, is presumed to be valid. (See *Ohio Bell Telephone Co. v. Public Utilities Commission* 301 U.S. 292 (1937); *Lone Star Gas Co. v. Texas* 304 U.S. 224 (1938). The Union has entirely failed to overcome that presumption.

The Commission order in the present case followed the general method employed by the Commission in rate proceedings in California, as described in *Pacific Telephone & Telegraph Co. v. PUC* 62 C.2d 634 (1965). A review of this method illuminates the inapplicability of federal labor law. The Commission determined with respect to a "test period": (1) the rate base of Edison (value of the utility's property devoted to public use); (2) gross operating revenues; and (3) costs and expenses allowed for ratemaking purposes, resulting in (4) net revenues produced ("results of operations"). Then, by ascertaining the fair and reasonable rate of return to be fixed or allowed the utility upon its rate base, and comparing the net revenue which would be achieved at that rate with the net revenue of the test period, the Commission determined how much Edison's rates should be raised.

In estimating the costs and expenses allowed, the Commission allows for the effect of various changes in gross revenues, expenses or other conditions which are reason-

ably expected to prevail during the future period for which rates are to be fixed, so that the test-year results of operations as determined by the Commission will be as nearly representative of future conditions as possible. *Pacific Tel. & Tel. Co.*, supra, at 645. Operating expenses, comprised of all of the costs associated with running the utility, including the labor, materials, and other expenses required to operate and maintain its electric system, were forecast. Escalation rates were used to obtain inflation-adjusted data for ratemaking purposes. The Commission then adopted a projected 6.1% union and nonunion labor escalation rate for test year 1983, for purposes of determining the increase in electric rates to be charged by Edison.

The Commission's projection of labor expenses, as a component of estimated operating costs and expenses allowable for ratemaking purposes, was (1) a lawful exercise of the Commission's jurisdiction; and (2) in full conformance with relevant authority in the field of labor relations as well as general rules governing the doctrine of preemption.

A. In Rendering Decision 82-12-055 the Commission Acted Consistent With Its Constitutional and Statutory Powers and Responsibility to Ensure That Ratepayers Receive Adequate Service at Just and Reasonable Rates.

Article XII Section 6 of the California Constitution specifically confers jurisdiction upon the Commission to "fix rates". Section 5 further grants to the California Legislature plenary power to confer additional authority and jurisdiction upon the Commission. Pursuant to this power, the State Legislature enacted California Public Utilities Code

Section 451, charging the Commission with the obligation of ensuring that all charges, demanded or received by any public utility, are just and reasonable, and Section 454, providing that no public utility shall raise any rate except upon a showing before the Commission and a finding by the Commission that such increase is justified.

In addition, the Commission possesses those implied powers which are either necessary or convenient in the exercise of its ratemaking authority as well as those which are necessary or convenient in the exercise of its general power over Edison as a regulated public utility. Section 701 of the California Public Utilities Code authorizes the Commission to supervise and regulate every public utility in the state and "do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." The State Legislature has thus given the Commission broad discretionary power to regulate public utilities.

B. The Doctrine of Federal Preemption Has No Application to the Ratemaking Action Taken By the Commission.

Petitioner's attempt to undermine the Commission's ratemaking powers by arguing that such action is precluded by federal labor law, fails. The labor relations preemption doctrine explicitly recognizes that federal labor law does not preempt all state regulation that "touches or concerns in any way the complex interrelationships between employees, employer and unions," *Motor Coach Employees v. Lockridge* 403 U.S. 274, 289 (1971). Even in the area of labor relations, a state may exercise its historic powers over traditionally local matters, *Machinists*, supra. Clearly,

the regulation of public utility rates is historically a concern of state law (See *International Brotherhood of Electrical Workers v. Public Service Commission* 614 F.2d 206, 212 (1980)).

Although there is little doubt that under the federal statutes wages are a proper subject of compulsory bargaining, there is nothing in the NLRA which expressly forecloses all state regulatory power with respect to this issue, *Malone v. White Motor Corp.* 435 U.S. 497, 504 (1978). Thus, while it is clear that the doctrine of federal preemption has been applied in the area of labor relations, the Union has failed to show that federal labor law requires that state jurisdiction over utility ratemaking must yield.

Petitioner asserts a far broader reading of preemption than case law in the area of labor relations supports. No authority has been cited which supports the proposition that the California constitutional and statutory provisions which confer ratemaking jurisdiction on the Commission are preempted by the NLRA. The cases cited by the Union in support of its instant claim of preemption are unpersuasive and have no relevance to the action taken by the Commission. As discussed fully in Argument I, above, none of these cases involve the type of state action at issue in the case at bar. Nor is the rationale of these cases applicable to the decision now under review. Moreover, as the previous discussion of *Byrne,* supra, demonstrates, judicial precedent presenting facts most analogous to those at hand specifically rejects a claim of federal preemption.

The Union's contention that the Commission's ratemaking power has been preempted is also directly contrary to general principles underlying the doctrine of preemption.

Petitioner's arguments ignore the well-established rule that the proper approach is to reconcile the operation of both statutory schemes with one another rather than holding the state scheme completely ousted, *Silver v. New York Stock Exchange* 373 U.S. 341, 357 (1963). Decisions extending back to the turn of the century support this proposition, *Florida Lime & Avocado Growers, Inc. v. Paul* 373 U.S. 132, 142 (1963); *Huron Portland Cement Co. v. City of Detroit* 362 U.S. 440 (1960); *International Assn. of Machinists v. Gonzales* 356 U.S. 617 (1958); *Union Brokerage Co. v. Jensen* 322 U.S. 202 (1944); *Savage v. Jones* 225 U.S. 501 (1912).

In *Florida Lime & Avocado Growers, Inc. v. Paul,* cited with approval in *Byrne,* supra, and in *DeCanas v. Byrne* 424 U.S. 351, 356 (1976), this Court expanded on the notion that there is a presumption that state authority has not been ousted by Congressional action. In the words of the Court:

> "The principle to be derived from our decisions is that federal regulation of a field of commerce should not be deemed preemptive of state regulatory power in the absence of persuasive reasons—either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakenly so ordained." (at 142).

The Union has failed to provide the persuasive reasons to overcome this presumption against preemption.

In the specific area of labor relations, this Court has clearly stated that where interests "deeply rooted in local feeling and responsibility" are affected, it may not lightly be inferred that Congress intended to deprive the state governments of the power to act, *San Diego Building Trades*

Council v. Garmon 359 U.S. 236, 244 (1959), quoted with approval in *Machinists,* supra, at 136 and more recently in *Golden State Transit v. City of Los Angeles* 686 F.2d 758, 760 (1982). In such an instance, a finding of preemption must rest upon "compelling congressional direction," *Garmon,* supra at 244. The absence of such compelling direction in the case at bar confirms the lawfulness of the decision below.

CONCLUSION

For the foregoing reasons, the petition filed by the Union presents no question warranting review of the decision below, and should be denied. Alternatively, the judgment below should be affirmed.

Respectfully submitted,

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